

CITY ATTORNEY  
2010 MAR -8 PM 3:40

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UNLIMITED JURISDICTION  
SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

WILLIAM TAYLOR,

Plaintiff,

vs.

CITY OF BURBANK and DOES 1 through  
100, inclusive,

Defendants.

CASE NO. BC 422 252

[Assigned to John Shepard Wiley, Jr.  
Judge, Dept. 50]

SEPARATE STATEMENT OF SPECIAL  
INTERROGATORIES AND  
RESPONSES IN DISPUTE

[FILED AND SERVED  
CONCURRENTLY WITH MOTION  
FOR DISCOVERY OF PEACE OFFICER  
PERSONNEL AND TO COMPEL  
FURTHER RESPONSES TO  
INTERROGATORIES AND REQUEST  
FOR PRODUCTION]

Date: April 22, 2010  
Time: 8:30 a.m.  
Dept.: 50

Action Filed: September 22, 2009  
FSC: November 5, 2010  
Trial: November 16, 2010

35-10

1                   **TO THE COURT, ALL PARTIES, AND TO THEIR ATTORNEYS OF RECORD:**

2  
3                   **PLEASE TAKE NOTICE** that Plaintiff William Taylor hereby provides the following  
4 separate statement of interrogatories and responses in dispute, and the reasons why  
5 further responses should be compelled.

6  
7                   **INTERROGATORY NO. 2:**

8                   Identify each and every witness that has knowledge for the reasons of the  
9 demotion of Plaintiff from the rank of Deputy Chief to Captain.

10  
11                  **RESPONSE TO INTERROGATORY NO. 2:**

12                  City objects to this interrogatory on the ground that it is misleading and that it  
13 assumes facts not in evidence as plaintiff was not demoted to Captain. City further  
14 objects to this interrogatory on the ground that it seeks information protected from  
15 disclosure under Penal Code §832.7 and Evidence Code §1043. Notwithstanding, but  
16 subject to this objection, City responds as follows on information and belief:

17  
18                  The following witnesses were aware of the reasons for the restructuring: Plaintiff,  
19 Chief of Police Tim Stehr and his Command Staff, all members of the Department who  
20 received the Chief's Daily Bulletin on the restructuring, Elizabeth J. Gibbons, and City  
21 Manager Mike Flad. Witness information gathered or generated during the investigation  
22 into alleged improprieties by plaintiff, which is ongoing and as such remains confidential  
23 and privileged, will be provided when and if they are discoverable.

24  
25                  **REASON WHY FURTHER RESPONSE SHOULD BE COMPELLED:**

26                  It is clear from defendant's response that defendant relies upon "witness  
27 information gathered or generated during the investigation into alleged improprieties by  
28

1 plaintiff" in regard to the alleged reasons for its demotion of plaintiff from Deputy Chief to  
2 Captain. Indeed, defendant claims that the "the most serious contributing factor" relied  
3 upon by defendant in demoting plaintiff was the alleged improprieties of plaintiff which are  
4 the subject of these alleged confidential investigations. Defendant cannot have its cake  
5 and eat it too. Plaintiff is entitled to be apprised by defendant under oath of all facts,  
6 witnesses, and documents that defendant claims allegedly support its contentions in this  
7 matter so that plaintiff may rebut same and demonstrate that such alleged reasons are  
8 false, pretextual, and a sham, and that the real reason for the demotion and other  
9 adverse employment actions taken against plaintiff was retaliation by defendant for  
10 plaintiff engaging in activities protected by *Labor Code* Section 1102.5 and FEHA.  
11

12 The *McDonnell Douglas* burden-shifting framework applies in FEHA retaliation  
13 cases as well as discrimination cases under both federal and state law. The same  
14 framework also applies to retaliation actions premised on violations of *Labor Code* Section  
15 1102.5. *Patten v. Grant Joint Union High School District* (2005) 134 Cal.App.4th 1378.  
16 Under this framework, a plaintiff is required to establish a prima facie case, which consists  
17 of showing that: a) plaintiff engaged in a protected activity; b) the employer subjected  
18 plaintiff to an adverse employment action; and c) a causal link exists between the  
19 protected activity and the employer's action. *Passantino v. Johnson & Johnson Consumer*  
20 *Products, Inc.* (9th Cir. 2000) 212 F.3d 493, 506 (under Title VII); *Yanowitz v. L'Oreal*  
21 *USA, Inc.* (2005) 36 Cal.4th 1028, 1044, 32 Cal.Rptr.3d 436, 446 (under FEHA).  
22

23 The causal link may be based solely on the timing of the relevant actions:  
24 "Specifically, when adverse employment decisions are taken within a reasonable period of  
25 time after complaints of discrimination have been made, retaliatory intent may be  
26 inferred." *Passantino v. Johnson & Johnson Consumer Products, Inc.* (9th Cir. 2000) 212  
27  
28

1 F.3d 493, 507; *Mulhall v. Ashcroft*, *supra*, 287 F.3d at 551; *Mariani-Colon v. Department*  
2 *of Homeland Security ex rel. Chertoff* (1st Cir. 2007) 511 F.3d 216, 224 - temporal  
3 proximity (2 months) between protected activity and discharge sufficient for relatively light  
4 burden of establishing prima facie case of retaliation.

5 Thus, the temporal relationship between engaging in the protected activity and a  
6 subsequent adverse employment action is circumstantial evidence of retaliation. *Flait v.*  
7 *North American Watch Company* (1992) 3 Cal.App.4th 467, 478 -479. A series of acts on  
8 the part of a defendant employer which proceed in linear fashion from whistleblower  
9 disclosures and culminating in adverse employment actions present a triable issue of  
10 material fact as to a "causal link" between the protected activity and the adverse  
11 employment action. *Patten v. Grant Joint Union High School District*, *supra*, 134  
12 Cal.App.4th at 1390. Here, the temporal and linear connection is both direct and obvious.  
13 Moreover, the relationship between plaintiff's whistleblowing activities and the adverse  
14 employment actions is sufficient by itself to provide circumstantial evidence of retaliation  
15 sufficient to establish a prima facie case. In *Colarossi v. Coty US Inc.* (2002) 97 Cal.  
16 App. 4<sup>th</sup> 1142, the court noted that "suspicious" timing of the employer's actions may  
17 provide the circumstantial link needed to infer that an improper purpose accounted for the  
18 adverse action. (*Id.* at 1154.) "The timing of the decision may have been coincidental, but  
19 when viewed as part of the mosaic of evidence" plaintiff presented, it will support the  
20 causal element of an employment claim. As stated in *Passantino v. Johnson & Johnson*  
21 *Consumer Prods., Inc.* (9<sup>th</sup> Cir 2000) 212 F.3d 493, 507: "[T]his close timing provides  
22 circumstantial evidence of retaliation that is sufficient to create a prima facie case of  
23 retaliation." (noting that causation can be inferred from timing alone.); See also, e.g. *Miller*  
24 *v. Fairchild Indus.* (9<sup>th</sup> Cir. 1989) 885 F. 2d 498, 505.

1 Once plaintiff has established a prima facie case, the employer must then articulate  
2 a legitimate, nonretaliatory reason for each of the adverse employment actions taken. If  
3 the defendant is able to do so, then the plaintiff must prove the employer's reason is a  
4 pretext. *Stegall v. Citadel Broadcasting Co.* (9th Cir. 2003) 350 F.3d 1061, 1065; *Flait v.*  
5 *North American Watch Corp.* (1992) 3 Cal.App.4th 467, 475-476.  
6

7 Here, plaintiff engaged in the activities of whistleblowing and reporting and  
8 protesting discrimination in the workplace, which activities are protected activities under  
9 *Labor Code* Section 1102.5 and FEHA. Within a short time of engaging in such protected  
10 activities plaintiff was demoted from the rank of Deputy Chief to Captain, and has  
11 subsequently been placed on administrative leave, based upon alleged reason that  
12 plaintiff had engaged in improprieties, including that plaintiff had improperly interfered in  
13 and attempted to influence an internal affairs investigation. Plaintiff contends that this  
14 alleged reason is false and a sham, and is simply a pretext for retaliating against plaintiff  
15 based upon his engaging in the protected activities enumerated above. It is well settled  
16 that evidence of dishonest reasons for adverse employment actions proffered by the  
17 employer permits a finding of prohibited motive, bias, or intent. *Reeves v. Sanderson*  
18 *Plumbing Products, Inc.* (2000) 530 U.S. 133, 148- 149, 120 S. Ct. 2097, 2109; *St. Mary's*  
19 *Honor Center v. Hicks* (1993) 509 U.S. 502, 511, 518, 113 S. Ct. at pp. 2749-2750, 2753.  
20  
21

22 Pretext, like a prima facie showing of causation, may be inferred from the timing of  
23 the company's termination decision, by the identity of the person making the decision, and  
24 by the terminated employee's job performance before termination. *Sada v. Robert F.*  
25 *Kennedy Medical Center* (1997) 56 Cal.App.4th 138, 156 - 157; *Flait v. North American*  
26 *Watch Co., supra*, 3 Cal.App.4th at 478 - 479; see also, *Miller v. Fairchild Industries, Inc.*,  
27 885 F.2d 498, 505-06 (9<sup>th</sup> Cir. 1989). These factors support an inference that defendant's  
28

1 stated reason for taking adverse employment actions against plaintiffs were merely a  
2 subterfuge for its retaliatory conduct. See, *Sada v. Robert F. Kennedy Medical Center*,  
3 *supra*, 56 Cal.App.4th at 156; *Flait v. North American Watch Co.*, *supra*, 3 Cal.App.4th at  
4 480 ("Viewing the evidence in the light most favorable to [the plaintiff], a reasonable trier  
5 of fact could conclude that [the defendant's] articulated reasons for terminating [the  
6 plaintiff's] employment are not worthy of credence").  
7

8 As such, the information and documents sought by this motion are directly relevant  
9 and discoverable in regard to the defendant's alleged reason for the adverse employment  
10 actions taken against plaintiff, and are directly relevant and discoverable in regard to  
11 plaintiff establishing that the defendant's proffered reason is false and pretextual.  
12

13 **II. THE INFORMATION AND DOCUMENTS REQUESTED ARE NOT PRIVILEGED**  
14 **UNDER EVIDENCE CODE SECTION 1040, ET SEQ.**

15 Defendant vaguely claims that the "witness information and documents gathered or  
16 generated during the investigation into alleged improprieties by plaintiff, which is ongoing  
17 and as such remains confidential and privileged". However, during the meet and confer  
18 process in regard to this motion, defendant cited only a single case, *County of Orange v.*  
19 *Superior Court* (2000) 79 Cal.App.4th 759, in support of its position that the information  
20 and documents sought are confidential. The *County of Orange* case is readily  
21 distinguishable, and does not support defendant withholding the information and  
22 documents sought under the facts of this case.

23 In the *County of Orange* case, the plaintiffs sought to obtain the files regarding an  
24 on-going criminal homicide investigation regarding the murder of a two year old boy in  
25 which the plaintiffs had been identified as two of the primary suspects. The court held as  
26 follows:  
27

28 "We conclude on the record before us that the public interest in solving C. T.  
Turner's homicide and bringing the perpetrator(s) to justice outweighed the

1 **Wus' interest in obtaining the discovery sought, at least at the time this**  
2 **matter was considered below.** We recognize the rather arbitrary nature of this  
3 **conclusion, but the order we review was made less than a year after this civil action**  
4 **was filed. (And it is still less than three years since it was filed.) When one reflects**  
5 **that the lives of other children may be at risk with the killer(s) still at large,**  
6 **the important interests in vindicating wronged plaintiffs and clearing dockets**  
7 **do not seem quite so important.** Consequently, we find the superior court abused  
8 its discretion in ordering production of the investigative file to the Wus' attorney.  
9 And, parenthetically, we think that most reasonable parents in the Wus' position  
10 would concur that the interest in apprehending a child's killer must continue to take  
11 priority over any civil action of theirs. 79 Cal.App.4th 759, 767 - 768.

12 Here, there is no unsolved homicide of a child that is being investigated by the  
13 defendant in which plaintiff is a suspect. Indeed, there is no criminal investigation of any  
14 kind being conducted by the defendant in which plaintiff is a suspect. At best, defendant  
15 claims to be investigating alleged violations of its own internal policies regarding the  
16 conducting of internal affairs investigations. Defendant cannot possibly cite to any public  
17 interest in maintaining the confidentiality of the information and documents at issue that  
18 approaches in any way the magnitude of the public interest in apprehending the murderer  
19 of a two year old boy. Indeed, exactly the opposite is true - the public interest in assuring  
20 that law enforcement officials such a plaintiff, the former Deputy Chief of the defendant's  
21 own police department, be free to report wrongdoing and discrimination by other members  
22 of his police department without fear of retaliation, clearly outweighs any alleged  
23 confidentiality interests of the defendant. Here, the public interest overwhelmingly  
24 supports that plaintiff be provided with all of the information and documents necessary to  
25 rebut defendant's specious and retaliatory claims of misconduct by plaintiff, and to protect  
26 plaintiff's statutory rights to report the misconduct of defendant and its employees.

27 **III. PLAINTIFF AND HIS COUNSEL SHOULD BE PROVIDED THE INTERNAL**  
28 **AFFAIRS STATEMENTS AND OTHER DOCUMENTS REGARDING THE**  
**INCIDENTS AT ISSUE IN ORDER TO REBUT DEFENDANT'S ALLEGED**  
**REASON FOR TAKING ADVERSE ACTIONS AGAINST PLAINTIFF, TO**  
**PREPARE FOR DEPOSITIONS AND TRIAL, AND TO BE ABLE TO IMPEACH**  
**THE TESTIMONY AND REFRESH THE RECOLLECTIONS OF WITNESSES, AS**  
**HAS BEEN SPECIFICALLY FOUND PROPER IN THE HAGGERTY V.**  
**SUPERIOR COURT CASE**

1 In *Haggerty v. Superior Court* (2004) 117 Cal.App.4<sup>th</sup> 1079, 1089, the court  
2 specifically held that disclosure pursuant to the Pitchess procedure of internal affairs  
3 investigation reports and other investigative materials regarding the incident at issue in the  
4 civil case against a deputy sheriff, including internal affairs interviews, transcripts, and  
5 other data, was proper. Here, similarly, the Court should order the production of all  
6 relevant reports, investigative materials, interviews, transcripts, and other data regarding  
7 the investigation and disposition of any complaints of misconduct allegedly involving  
8 plaintiff.

10 Here, as in *Haggerty v. Superior Court, supra*, 17 Cal.App. 4<sup>th</sup> at 1089 - 1091, the  
11 facts gleaned from the internal investigations at issue are directly relevant to the matters  
12 at issue in the lawsuit. Moreover, as in *Haggerty*, the requested discovery is important,  
13 not only for determining the events that occurred during the incidents, but also for  
14 plaintiff's counsel to prepare effective cross-examination of defense witnesses, including  
15 to impeach witnesses whose testimony at trial differs from statements made to the  
16 investigating officers and/or to refresh the recollections of these witnesses. (See *People v.*  
17 *Hustead* (1999) 74 Cal.App.4<sup>th</sup> 410, 417; see also, *People v. Memro, supra*, 38 Cal.3d at  
18 677 ["one legitimate goal of [*Pitchess*] discovery is to obtain information 'for possible use  
19 to impeach or cross-examine an adverse witness.]" See also, *Garden Grove Police*  
20 *Department v. Superior Court, supra*, 89 Cal. App. 4<sup>th</sup> at 433.

23 Plaintiff is therefore entitled to the requested information not only to use as  
24 substantive evidence to establish that defendant's alleged reasons for the adverse  
25 employment actions at issue are pretextual, but also to use to impeach the testimony  
26 and/or refresh the recollections of defense and other witnesses. As in *Haggerty*, the  
27 investigations at issue concern the very incidents that are the subject of the civil claim.  
28



1 Additionally, as in *Haggerty*, the privacy concerns of defendant and its employees are  
2 diminished because they are the persons and/or entities whose conduct is at issue in the  
3 litigation, and the requested internal investigation records concern their actions that are  
4 alleged to be wrongful and will be fully litigated at trial.

5  
6 Because of the direct relevance of the information, courts have recognized that the  
7 law enforcement records of the investigations of the matters at issue in the case are  
8 discoverable and have never imposed any special limitations on this disclosure if the  
9 requested discovery otherwise meets the statutory criteria. (See *Robinson v. Superior*  
10 *Court* (1978) 76 Cal.App.3d 968, 978 - "[a]ll statements made by percipient witnesses  
11 and witnesses ... related to the incident in question ... are discoverable under the  
12 standards set forth in *Pitchess*" ; see also *People v. Alexander* (1983) 140 Cal.App.3d  
13 647, 659, disapproved on another point in *People v. Swain* (1996) 12 Cal.4th 593.

14  
15 Further, the *Haggerty* court also rejected the contention that the disclosure of  
16 relevant internal affairs records would have a chilling effect on every law enforcement  
17 agency's ability to conduct an uninhibited, thorough and candid analysis of a complaint,  
18 finding such concerns speculative. The court noted that the question of whether police  
19 investigation records are discoverable has been unequivocally answered in the  
20 affirmative by the Legislature in enacting the *Pitchess* statutory scheme, and that the  
21 *Pitchess* "legislation was intended to balance the need of criminal defendants [and civil  
22 litigants] to relevant information and the legitimate concerns for confidentiality of police  
23 personnel records." *People v. Breaux* (1991) 1 Cal.4th 281, 312. The court held that in  
24 balancing these interests, the Legislature made a decision that relevant evidence  
25 contained in a personnel file, including internal investigation records and reports, should  
26 be disclosed upon a proper showing of materiality and relevance, and did not provide any  
27  
28

1 blanket exceptions to the discoverability of such reports, particularly in the civil context.  
2 *Haggerty v. Superior Court, supra*, 17 Cal.App. 4<sup>th</sup> at 1091 - 1092.

3 Here, a plausible foundation exists to conclude that plaintiff was subjected to  
4 retaliation by defendant for engaging in activities protected by *Labor Code* Section 1102.5  
5 and FEHA. The information and documents sought are directly relevant and material to  
6 plaintiff's contentions that the reason given for the retaliatory actions by defendant are  
7 false, a sham, and simply a pretext for retaliation. Indeed, defendant and its counsel have  
8 conceded that such information and documents are relevant by repeatedly referencing  
9 same throughout defendant's sworn discovery responses in this matter. As such, the  
10 records pertaining to the investigations by defendant of the allegations made against  
11 plaintiff are relevant and material. The information and documents sought should be  
12 disclosed to plaintiff. In the alternative, such information and documents should be  
13 examined by the court *in camera*, and all evidence relevant to plaintiff's claims should be  
14 turned over to plaintiff's counsel.  
15

17 **IV. THE INFORMATION AND DOCUMENTS REQUESTED ARE NOT PRIVILEGED**  
18 **UNDER THE ATTORNEY-CLIENT PRIVILEGE OR THE ATTORNEY WORK**  
19 **PRODUCT DOCTRINE**

20 An employer waives the attorney-client and attorney work product privileges  
21 regarding the contents of an investigation by raising the fact of the investigation as a  
22 defense. *Wellpoint Health Networks, Inc. v. Sup.Ct. (McCombs)* (1997) 59 Cal.App.4th  
23 110, 122-124, 128 - defendants waived attorney-client privilege regarding contents  
24 investigation of plaintiff's sexual harassment claim by raising fact of investigation as  
25 defense. (See also, *McGrath v. Nassau County Health Care Corp.* (ED NY 2001) 204  
26 F.R.D. 240, 244. Where the employer relies on the investigator's report to show that it  
27 conducted an adequate investigation of charges, that report will be subject to pretrial  
28

1 discovery, even if the investigator was an attorney. *Wellpoint Health Networks, Inc. v.*  
2 *Sup.Ct. (McCombs)* (1997) 59 Cal.App.4th 110 - employer's pleading adequacy of its  
3 investigation as defense waives attorney-client privilege and work product doctrine;  
4 *Walker v. Contra Costa County* (ND CA 2005) 227 F.R.D. 529, 535 - pleading adequate  
5 investigation of harassment complaint as affirmative defense waived attorney-client  
6 privilege, self-evaluative privilege and attorney work product protection.  
7

8 Further, a report that simply summarizes the investigation or presents factual  
9 conclusions for management action, and does not contain confidential legal advice, is not  
10 privileged from discovery even if it was prepared by an attorney. *Wellpoint Health*  
11 *Networks, Inc. v. Sup.Ct. (McCombs)* (1997) 59 Cal.App.4th 110, 121-122.  
12

13 Here, the investigation at issue is being conducted by an investigator named  
14 James Gardiner, and not by any attorney. Defendant is specifically relying upon the  
15 information and documents generated by this investigation to support its denials and  
16 alleged defenses in this matter. As such, even if the attorney-client and/or attorney work  
17 product privileges applied to this investigation (which they do not), such privileges have  
18 been waived by defendant.

19 **V. PLAINTIFF IS ENTITLED TO DISCLOSURE OF THE REQUESTED**  
20 **DOCUMENTS**

21 **A. Peace Officer Personnel Records Are Expressly Discoverable Pursuant to**  
22 **Evidence Code §1043(a) and 1045(a)**

23 *Evidence Code* §1043 and 1045(a) provide that if the personnel records and  
24 information contained therein are relevant to the subject matter of the litigation, upon  
25 motion by the party seeking the records and information there is a right of access to the  
26 records of complaints, investigations of complaints, and discipline imposed as a result of  
27 such investigations.  
28

1        *Evidence Code* §1045(a) provides as follows:

2        **"(a) Nothing in this article shall be construed to affect the right of access to**  
3        **records of complaints, or investigations of complaints, or discipline imposed**  
4        **as a result of such investigations, concerning an event or transaction in**  
5        **which the peace officer participated, or which he perceived, and the manner**  
6        **in which he performed his duties, provided that such information is relevant**  
7        **to the subject matter involved in the pending litigation. (Emphasis added)**

8        This subdivision is "expansive." *Fletcher v. Superior Court* (2002) 100 Cal.App.4th  
9        386, 399. In particular, "relevant information" under *Evidence Code* Section 1045 is not  
10       limited to facts that may be admissible at trial, but may include facts that could lead to the  
11       discovery of admissible evidence. *People v. Memro, supra*, 38 Cal.3d at 681-682; *People*  
12       *v. Husted, supra*, 74 Cal.App.4th at 423.

13       Under the statutory scheme, a party seeking discovery of a peace officer's  
14       personnel records need only file a written motion describing the type of records sought,  
15       supported by "[a]ffidavits showing good cause for the discovery... , setting forth the  
16       materiality thereof to the subject matter involved in the pending litigation and stating upon  
17       reasonable belief that the governmental agency identified has the records or information  
18       from the records." (*Evidence Code* § 1043 (b)(3).) This initial burden is a "relatively  
19       relaxed standard." *City of Santa Cruz v. Municipal Court* (1989) 49 Cal.3d 74, 84.  
20       Information is material as defined by *Evidence Code* § 1043 (b)(3) if it 'will facilitate the  
21       ascertainment of the facts and a fair trial.' "[A] declaration by counsel on information and  
22       belief is sufficient to state facts to satisfy the 'materiality' component of that section." *Abatti*  
23       *v. Superior Court, supra*, 112 Cal.App.4th at 51.

24       In *Santa Cruz v. Municipal Court, supra*, 49 Cal.3d 88 - 89, the California Supreme  
25       Court held that personal knowledge is not required by *Evidence Code* 1043(b) and that an  
26       affidavit on information and belief is sufficient. The Court found that in the context of  
27       Pitchess motions, the Legislature had expressly considered and rejected a requirement of  
28

1 personal knowledge. The Court held that the legislative history, the case law background,  
2 and the statutory language all point to the same conclusion: the "materiality" component  
3 of *Evidence Code* § 1043(b) may be satisfied by affidavits based on information and  
4 belief. (49 Cal.3d at 89.)

5  
6 In *Abatti v. Superior Court*, *supra*, 112 Cal.App.4<sup>th</sup> 39, the *Pitchess* motion  
7 contained an affidavit of counsel that related statements from other officers that the former  
8 officer had been asked to leave, and had been the subject of other complaints, and was  
9 labeled a "liability" problem for the department. *Id.* at 46-47. The court considered  
10 counsel's affidavit sufficient, even though it merely averred the contents of the counseling  
11 memos rather than stating with specificity the evidence which was contained therein. The  
12 court reasoned that to require such "specificity" in the *Pitchess* process would place the  
13 proponent of the motion in a "Catch-22" position of having to allege with particularity the  
14 very information he or she is seeking. *Id.* at 47, fn. 7.

15  
16 **VI. THE INFORMATION AND DOCUMENTS SOUGHT ARE RELEVANT AND**  
17 **DISCOVERABLE, AND RELATE DIRECTLY TO DISPUTED ISSUES IN THIS**  
18 **CASE**

19 Relevance is defined by *Evidence Code* Section 210, which provides that:

20 "Relevant evidence" means evidence, including evidence relevant to the credibility  
21 of a witness or hearsay declarant, having any tendency in reason to prove or  
22 disprove any disputed fact that is of consequence to the determination of the  
23 action."

24 Relevance to the subject matter is to be broadly construed and is not limited to  
25 relevance to the narrow issues of the case. *Greyhound Corporation v. Superior Court*  
26 (1961) 56 Cal.2d 355, 378, 390. As set forth above, in the *Pitchess* motion context, a  
27 declaration by counsel on information and belief is sufficient to state facts to satisfy the  
28 'materiality' component of *Evidence Code* § 1043(a). *Abatti v. Superior Court* (2003) 112  
Cal.App.4<sup>th</sup> 39, 51; *Haggerty v. Superior Court*, *supra*, 17 Cal.App. 4<sup>th</sup> at 1086.

1 Resources, personnel and payroll documents. Documents gathered or generated during  
2 the investigation into alleged improprieties by plaintiff, which is ongoing and as such  
3 remains confidential and privileged, will be provided when and if they are discoverable.  
4

5 **REASON WHY FURTHER RESPONSE SHOULD BE COMPELLED:**  
6

7 It is clear from defendant's response that defendant relies upon "documents  
8 gathered or generated during the investigation into alleged improprieties by plaintiff" in  
9 regard to the alleged reasons for its demotion of plaintiff from Deputy Chief to Captain.  
10 Indeed, defendant claims that the "the most serious contributing factor" relied upon by  
11 defendant in demoting plaintiff was the alleged improprieties of plaintiff which are the  
12 subject of these alleged confidential investigations. Defendant cannot have its cake and  
13 eat it too. Plaintiff is entitled to be apprised by defendant under oath of all facts,  
14 witnesses, and documents that defendant claims allegedly support its contentions in this  
15 matter so that plaintiff may rebut same and demonstrate that such alleged reasons are  
16 false, pretextual, and a sham, and that the real reason for the demotion and other  
17 adverse employment actions taken against plaintiff was retaliation by defendant for  
18 plaintiff engaging in activities protected by *Labor Code* Section 1102.5 and FEHA.  
19

20 Plaintiff contends that none of the requested information and documents are  
21 confidential and protected from discovery, under Penal Code §832.7, Evidence Code  
22 §1043, the attorney-client privilege, the attorney work-product doctrine, or any other  
23 privilege. Plaintiff hereby incorporates by reference all of the authorities and argument  
24 regarding the relevance, discoverability, and reasons why such information and  
25 documents are not privileged as set forth above in regard to Special Interrogatory No. 2 as  
26 though set forth here in extenso.  
27  
28

1 Dated:

3) 4) 10

2  
3  
4 By:



GREGORY W. SMITH  
CHRISTOPHER BRIZZOLARA  
Attorneys for Plaintiff  
WILLIAM TAYLOR

PROOF OF SERVICE

STATE OF CALIFORNIA )  
 )  
COUNTY OF LOS ANGELES )

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years of age, and am not a party to the within action; my business address is 6300 Canoga Avenue, Suite 1590, Woodland Hills, California 91367.

On the date hereinbelow specified, I served the foregoing document, described as set forth below on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes, at Woodland Hills, addressed as follows:

DATE OF SERVICE : March 5, 2010

DOCUMENT SERVED : **SEPARATE STATEMENT OF SPECIAL INTERROGATORIES AND RESPONSES IN DISPUTE**

PARTIES SERVED : **SEE ATTACHED SERVICE LIST.**

XXX (BY REGULAR MAIL) I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail at Woodland Hills, California. I am "readily familiar" with firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

XXX (BY ELECTRONIC MAIL) I caused such document to be electronically mailed to **Christopher Brizzolara, Esq.** at the following e-mail address: samorai@adelphia.net.

XXX (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

— (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

EXECUTED at Woodland Hills, California on March 5, 2010.

\_\_\_\_\_  
Selma I. Francia



**SERVICE LIST**

**WILLIAM TAYLOR v. CITY OF BURBANK**  
**LOS ANGELES COUNTY SUPERIOR COURT CASE NO. BC 422 252**

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